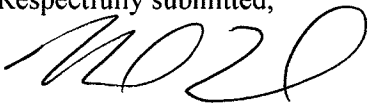


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| PRE-APPEAL BRIEF REQUEST FOR REVIEW (filed with the Notice of Appeal) | | Docket Number 042933/374136 |
| Application Number 10/612,343 | Filed 07/03/2003 | |
| First Named Inventor Elena Lialiamou | | |
| Art Unit 2617 | Examiner Phuong, Dai | |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p style="text-align: right;">Respectfully submitted,  Nathaniel T. Quirk Registration No. 60,676</p> <p>Date <u>August 2, 2010</u></p> <p>Customer No. 00826 ALSTON & BIRD LLP Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Charlotte Office (704) 444-1000 Fax Charlotte Office (704) 444-1111</p> <p>ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON August 2, 2010.</p> | | |

REMARKS/ARGUMENTS

This response is submitted in reply to the Office Action dated February 1, 2010 and the Advisory Action dated June 16, 2010. Claims 1, 3, 6-12, 14-18, 20, 21, 24, 25, 28, 29, 31-35, 37, 48, 51-72, 75, and 76 currently stand rejected. As explained below, however, Applicants respectfully submit that the claimed invention is patentably distinct from the cited references, taken in any proper combination. In view of the remarks presented herein, Applicants respectfully request that the rejections be reversed and the pending claims be deemed allowable.

A. Claims 1, 6, 8-12, 14-18, 20, 35, 51, 53-62, and 71 are Nonobvious.

Claims 1, 6, 8-12, 14-18, 20, 35, 51, 53-62, and 71 currently stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2005/0075957 to Pincus in view of U.S. Patent Publication No. 2003/0078031 to Masuda, in further view of U.S. Patent No. 6,044,360 to Picciallo. However, the cited combination fails to teach or suggest all of the elements of the claims and the claimed invention is not an obvious variant of the cited combination.

Independent claim 1 recites, and independent claims 35 and 71 similarly recite, "allocate said reserved portion [of money] between said plurality of services as required, without dividing said reserved portion into a plurality of parts between said plurality of services." In this regard, a reserved portion is a portion of money or related quantity set aside from a user's amount of money (e.g., a total account) for the purpose of funding a plurality of services within a communications session. As described in the published specification at paragraphs [0050] through [0054], the reserved portion may be exhausted based on contributions from each used service with respect to a total of the reserved portion, rather than with respect to individual limits for each service. Therefore, each service need not have a separate reserved portion or per-service limit. For example, one service may consume the entire reserved portion, even though the total reserved portion may be determined based on a plurality of services and associated tariffs. In another example, usage of each of three services may contribute to exhausting the reserved portion. The cited combination fails to teach or suggest this feature.

The Office Action admits that the combination of Pincus and Masuda fails to disclose this feature. To cure the deficiencies of Pincus and Masuda in this regard, the Office Action cites to the disclosure of Picciallo. However, the combination including Picciallo also fails to teach or suggest the claimed feature.

Picciallo is directed to a system for monetary account management where funds can be spent on various goods and services. In the abstract, Picciallo explains that limits can be placed on the amount of funds that may be spent on particular classes of goods and services. At issue is how the "limits" described in Picciallo are implemented and allocated.

In the Summary of the Invention section at column 2, lines 23-29, Picciallo states "[a]nother object of the invention is to provide a system and a computer-based method in which

account holders may transfer funds from preestablished accounts to third party recipients and set limits on the goods or services for which the funds are spent, or on the amounts which may be spent for certain goods or services.” This objective of Picciallo clearly introduces the goal of setting goods and service-based limits (i.e., limits that are specific to a particular good or service or class of good or service). Picciallo goes on to explain, again in the Summary of Invention section at column 3, lines 38-44, that “because banking and credit card institutions have already created an identification system with electronic fund transfer networks categorizing payees by the types of goods or services they provide, limits can be placed on the amount that is spent in restaurants daily, weekly or monthly using a debit card, and spending in pubs or taverns could be prohibited entirely.” Limits for restaurants and limits on pubs are, again, explanations of per-service limits. Further, at column 12, lines 10-14, Picciallo states “separate limits may be set for types of games, such as slot machines, black jack, and the like... [and] separate limits may be set for meals and alcoholic beverages.”

These excerpts clearly indicate that Picciallo is directed to per-service limits which employ a completely separate handling of the limits relative to the amount of money in the account. There is no description indicating that, for example, usage of each service is considered relative to an aggregate limit. Picciallo does not describe a situation where a limit is set such that meals and blackjack contribute to the same limit and all of the funds under the limit could be exhausted on, for example, only meals. This contrasts with the recitation of the independent claims, which indicates that the reserve portion is not divided into a plurality of parts between services.

Additionally, Picciallo does not employ a concept that correlates to the “reserve portion.” Recall that the reserve portion of the claims is an amount that is set aside from the user’s money for the purpose of funding services as the services are being used. Picciallo does not include disclosure of a reserve portion. Picciallo only describes operations relative to a user’s total account. As a result, even if the other references included in the combination are shown to disclose the concept of a reserved portion (which Applicant’s expressly do not admit), applying the limits of Picciallo to that context would not lead one of ordinary skill in the art to introduce the limits to the reserve portion. Rather, one of ordinary skill would be led to introduce the limits to the overall account as applied in Picciallo.

In this regard, the issues addressed in handling the reserve portion, are fundamentally different than the issues addressed by placing limits in the overall account. The reserve portion is implemented to ensure that services are not rendered that cannot be covered by the overall account, while limits to the overall account as described by Picciallo are not intended to ensure that services rendered can be covered, but rather to place caps on spending with respect to particular goods and services. Therefore, even at this conceptual level, the disclosure of Picciallo does not show the correlations that the Office Action uses to generate the cited combination.

Additionally, the disclosure of Masuda was previously relied upon for disclosing controlling the allocation of the reserved portion. In this regard, the Office Action continues to indicate that Masuda is relied upon for its disclosure of “two services [being] executed in accordance with their respective allotments.” Having just described a manner of executing services based on predefined allotments, the Office Action then attempts to combine Masuda with Picciallo for the purpose of generating a combination to disclose not using predefined service based allotments. If Picadillo does disclose the feature for which it is relied upon, i.e., not generating predefined divisions of funds within a reserved amount, then the references are contradictory and one of skill in the art would not combine the references for this purpose. As such, for this additional reason Picciallo is incompatible with the other references of the cited combination, and Picciallo does not disclose the feature that the Office Action relies upon for constructing the cited combination.

Additionally, Picciallo cannot be combined with Masuda and Pincus, because Picciallo is directed to a solution involving the use of magnetic cards, which is not contemplated in either of Masuda or Pincus. Therefore, it would not be obvious to combine the concepts disclosed and relied upon by the Office Action. At column 3, lines 14-23, Picciallo describes the aspect of third-party recipients, designated by account holders, being issued magnetic cards to access funds. These third-party recipients can then withdraw the funds as cash from an ATM or make point-of-sale purchases of goods and services by electronic fund transfer. Additionally, at column 3, lines 28-30, Picciallo describes the use of magnetic cards by the third-party.

Since the description of Picciallo is directed to magnetic card solutions and Masuda and Pincus are directed to wireless communications solutions, the references cannot be said to be from the same technical field. While bodily incorporation of the references into a homogenous solution is not the absolute test for combination, incompatibilities between technologies do provide a basis for determining whether one of ordinary skill in the art would consider the references in combination without relying upon improper hindsight. In this situation, none of Picciallo, Masuda, or Pincus provide any indication that one of skill in the art would consider the references in the aggregate given the clear discrepancies in the technical solutions being offered by the references.

Independent claims 1, 35, and 71, and their respective dependent claims, are therefore patentable over the cited combination. Applicants therefore respectfully request that the rejections of claims 1, 6, 8-12, 14-18, 20, 35, 51, 53-62, and 71 be reversed, and the claims be deemed allowable.

B. Claims 21, 24, 25, 28, 29, 32-34, 37, 63-66, 68-70, and 72 are Nonobvious.

Claims 21, 24, 25, 28, 29, 32-34, 37, 63-66, 68-70, and 72 currently stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pincus in view of U.S. Patent Publication No. 2004/0077332 to Ephraim, in further view of Masuda. However, the cited combination fails to

teach or suggest all of the elements of the claims and the claimed invention is not an obvious variant of the cited combination.

The combination of Pincus, Masuda, and Ephraim fails to teach or suggest, at least, "a controller configured to control an allocation of said monetary amount between a plurality of services to be accessed simultaneously by a user device," as recited in independent claim 21, and similarly recited in independent claims 37 and 72. Applicants respectfully submit that independent claim 21 recites "an allocation of said monetary amount," where "said monetary amount" refers back to a monetary amount that has been converted from information defining an amount of a reserved portion in a form other than a monetary amount. Independent claims 37 and 72 recite similar limitations.

The Office Action relies upon Ephraim for allegedly contributing to the cited combination in a manner that teaches or suggests a reserved portion. However, Ephraim fails to contribute to the cited combination in the manner relied upon by the Office Action. In this regard, Ephraim discusses a prepaid system which determines how data traffic is handled. The prepaid system examines packets representing requests or data and debits the prepaid account balance for the subscriber. Specifically, the prepaid system first calculates the debit in terms of "tokens," which are arbitrary internal units for charging for data transfer. The prepaid system then converts the value of the tokens to a monetary value for debiting the account of the user. (See Ephraim, Para. [0012]). Ephraim explicitly states that the conversion is done for the purpose of debiting the account of the user, and not for the purpose of allocating a reserved portion between a plurality of services. In this regard, Ephraim does not disclose operations with respect to a reserved portion, as recited in the claims and as relied upon by the Office Action when constructing the cited combination, and neither of Pincus or Masuda cure this deficiency of Ephraim. Thus, due to Ephraim's failure to disclose, or suggest, allocating a monetary amount which has been converted from information defining an amount of a reserved portion in a form other than a monetary amount, the cited combination fails to render the independent claims obvious.

As such, Ephraim does not disclose the feature that the Office Action relies upon for constructing the cited combination. Independent claims 21, 37, and 72, and their respective dependent claims, are therefore patentable over the cited combination. Applicants therefore respectfully request that the rejections of claims 21, 24, 25, 28, 29, 32-34, 37, 63-66, 68-70, and 72 be reversed, and the claims be deemed allowable.

C. Claims 31 and 67 are Nonobvious.

Claims 31 and 67 currently stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pincus, Ephraim, and Masuda in further view of U.S. Patent Publication No. 2004/0148384 to Ramakrishnan. However, the cited combination relies upon Ephraim for disclosing the same features as described above with respect to the rejection of independent claims 21 and 37, for which claims 31 and 67 depend, respectively. Since Ephraim fails in this regard, and

Ramakrishnan does not cure the deficiencies of Ephraim (nor is Ramakrishnan cited for this purpose), dependent claims 31 and 67 are patentable over the cited combination due at least to the failures of Ephraim. Applicants therefore respectfully request that the rejections of claims 31 and 67 be reversed, and the claims be deemed allowable.

D. Claims 3, 7, 48, 52, 75, and 76 are Nonobvious.

Claims 3, 7, 48, 52, 75, and 76 currently stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pincus and Masuda in further view of U.S. Patent No. 7,162,220 to Hanson. Dependent claims 3, 7, 48, and 52 are patentable for the same reasons as their respective independent claims described above, because Hanson does not cure the deficiencies of Pincus and Masuda, nor is Hanson cited for that purpose for rejecting the respective independent claims. The cited combination of Pincus, Masuda, and Hanson also fails to teach or suggest all of the elements of independent claims 75 and 76 and the claimed invention in this regard is also not an obvious variant of the cited combination.

Independent claim 75, and similarly independent claim 76, recites, "after the request is made, divide said reserved portion into a plurality of parts between said plurality of services, and reallocate a remainder of said reserved portion between said plurality of services when at least one of said plurality of services uses up its part of said reserved portion." Applicants respectfully submit that the combination of Pincus, Masuda, and Hanson fails to disclose, or suggest, the aforementioned feature.

The Office Action cites to Hanson to cure the deficiencies of Pincus and Masuda and form the cited combination to reject the claims. However, Hanson does not cure the deficiencies of Pincus and Masuda. Hanson is merely directed to the use of a maximum allowable call timer that is part of a pre-paid account. The Office Action fails to appreciate that the "using up" of a part of the reserved portion for a particular service is a triggering event for reallocating the remainder as recited in the claims. Hanson fails to provide any disclosure indicating that reallocation, as allegedly disclosed in Masuda, would be triggered by the expiration of the timer of Hanson. Neither Hanson nor Masuda discloses this cause and effect relationship, and therefore the cited combination fails to render the claims obvious.

As such, independent claims 75 and 76 are patentable over the cited combination. Applicants therefore respectfully request that the rejections of claims 75 and 76 be reversed, and the claims be deemed allowable.

CONCLUSION

In view of the remarks presented above, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.